SUPREME COURT OF THE UNITED STATES.

No. 221.

WILLIAM B. ASTOR, APPELLANT,

vs.

BANK OF STATE OF MISSOURI ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRIC OF MISSOURI.

GOVERNMENT PRINTING OFFICE.

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Pleas before the honorable Samuel F. Miller, an associate justice of the Supreme Court of the United States, and the Hon. Robert W. Wells, district judge of the United States for the western district of Missouri, and the honorable Samuel Treat, district judge of the United States for the eastern district of Missouri, judges of the circuit court of the United States for the districts of Missouri, October term, in the year 1863.

Bill in chancery.

WILLIAM B. ASTOR, complainants,
ag'st
THE BANK OF THE STATE OF MISSOURI, ROBERT A. BARNES *et al.*, defendants. } In chancery.

Be it remembered, that on the 12th day of March, 1863, the complainant in the above-entitled cause, by Henry Hitchcock, esquire, his solicitor, filed in the office of the clerk of the circuit court of the United States for the districts of Missouri a bill in chancery against defendants therein named, and which is as follows, viz:

To the honorable the judges of the circuit court of the United States, within and for the districts of Missouri, sitting in equity.

William B. Astor, of the city of New York, and a citizen of the
2 State of New York, brings this his bill against the "Bank of the State of Missouri," a body politic and corporate established by and under the laws of the State of Missouri, (and having its chief office for the transaction of business in the county of St. Louis, in said State,) and against Robert A. Barnes, as president of said corporation, and Anthony S. Robinson, as cashier of the same, both of whom are citizens of said State of Missouri, and against the said Robert A. Barnes, and Edward Walsh, John O'Fallon and Pierre Chouteau, junior, all of whom are citizens of said State of Missouri, and are herein sued as well for themselves as for and representing all other persons, names unknown, formerly stockholders in the late "Bank of the State of Missouri," a corporation heretofore established and doing business in said State of Missouri under the laws thereof, who have received any portion or share of the stock or assets of said late corporation.

And thereupon your orator complains and says: That by an act of the general assembly of said State of Missouri, approved the 2d day of February, A. D. 1837, entitled "An act to charter the Bank of the State of Missouri," there was established in the city of St. Louis, in said State, a banking company called the "Bank of the State of Missouri," with an authorized capital stock of five millions of dollars, to be divided into shares of one hundred dollars each; whereof one-half was reserved for the use of the State of Missouri, the remainder being authorized to be subscribed for by individuals as therein prescribed. That
3 by said act the persons who should become holders of said capital stock were created a body politic and corporate under the name aforesaid, to have succession as such until the year of our Lord one thousand eight hundred and fifty-seven, and no longer. That said bank was to be governed by a president and twelve directors, the president and at least six of said directors to be appointed on behalf of the State therein prescribed.

That by said act it was further provided that books should be opened for the subscription of thirty thousand shares of the capital stock of said bank on the third Monday in February, A. D. 1837, in manner therein set forth; that the governor of said State of Missouri was by said act authorized and directed

thereupon to subscribe one-half of said thirty thousand shares on behalf of the State of Missouri, a part thereof to be held by said State for the use of the seminary and saline funds, and the residue of said shares to be held for the use of said State.

That for said residue of said shares so to be subscribed for on behalf and held for the use of said State, the said governor was by section 5th of said act authorized and directed to execute to said bank the bonds of said State of Missouri, in sums of not less than one thousand dollars each, in amount to be equal to said residue of said shares; which bonds were to bear interest from
4 date of negotiation thereof as follows: the first half million at a rate not exceeding six per centum per annum, the remainder at a rate not exceeding five per centum per annun, payable semi-annually in the city of New York, to wit, in said State of New York. Said bonds were required to be made payable to said Bank of the State of Missouri twenty-five years after negotiation thereof, and the said governor was required to deliver said bonds to the president and directors of said bank in full payment of the stock subscribed for, as aforesaid, on behalf of the said State. That by said act the said bank was authorized, either through an agent thereby required to be appointed, or in any other manner or by any other means best suited to its interests, to bring into market, negotiate, and sell the said State bonds, provided that said bonds should not be sold at a discount.

And your orator further shows to your honors, that said act, by the terms thereof, took effect from said date of its passage; that said "Bank of the State of Missouri" was duly organized thereunder early in the year 1837; that a president and directors were duly appointed for, and forthwith entered upon the management of its affairs; that a large number of shares of said stock were subscribed for and taken by individuals to your orator unknown, save that they were citizens of this and other States, nor does he know the precise amount of stock so taken; that the said governor subscribed for fifteen thousand
5 shares thereof on behalf of said State, whereof more than 5,000 shares were held for the use of said State; and that thereafter, in the same year, 1837, the said bank, by its officers and agents, did commence to do business as such, and did thenceforward continue to carry on a banking business in said city of St. Louis and elsewhere in said State, as by said act authorized, until its said charter was annulled, as hereinafter mentioned, during which period said bank became and was possessed of a large amount of real and personal property, in value exceeding two millions of dollars, and was possessed at the time said charter was so annulled and surrendered, as hereinafter mentioned, of assets in value greatly exceeding all the liabilities thereof, direct or contingent, then due or otherwise.

And your orator further shows to your honors, that pursuant to the provisions of the 5th section of said act of Feburary 2d, A. D. 1837, the said governor of the State of Missouri did execute to said bank certain bonds of said State, which were by him delivered to and received by the president and directors of said bank in payment for stock subscribed for on behalf and to the use of said State. That among the State bonds so executed and delivered to said bank, and being part of the first half million of bonds authorized by and executed and delivered under said 5th section of said act, the said governor did, in or about the month of August, A. D. 1837, execute and deliver,
6 as aforesaid, one hundred bonds of said State of Missouri, signed by him as such governor, and countersigned by the secretary of state of said State of Missouri, under the seal of said State, being each for the sum of one thousand dollars, payable to said bank or their assigns, bearing an interest of six per centum per annum from the day of negotiation thereof, payable by said bank semi-annually thereafter at a bank in the city of New York, or at such other place as the said bank by endorsement thereon might agree to pay

the same, on the presentation and delivery of the coupons to said bonds respectively annexed, until payment of said principal sums, which principal sums was on a credit of twenty-five years after negotiation. Said bonds were numbered consecutively from 401 to 500, inclusive, and a copy of one of said bonds is herewith filed, (marked A,) and made part of this bill, all the remainder of said one hundred bonds being of like tenor therewith.

And your orator further shows, that in the month of December, A. D. 1837, certain negotiations were had, as by said act authorized, with one John Jacob Astor, a citizen of the State of New York, which resulted in the sale and assignment by said bank to said Astor of all of the said one hundred State bonds above mentioned, the said Astor paying to said bank not less than the par value thereof, and the date of said negotiation and assignment being the first day of January, A. D. 1838, said assignment was in writing, on the back
7 of each of said one hundred bonds signed by the president and countersigned and attested by the cashier of said bank under the seal thereof, at said city of St. Louis, and said bank thereby agreed to pay the coupons to said bonds respectively annexed to the holders thereof respectively at the Bank of America, in the city of New York, the said John Jacob Astor, as by the terms of said assignment declared, selecting said last-mentioned bank for payment of interest and principal. A copy of said assignment is herewith also filed, marked B, and made part of this bill.

And your orator further shows, that thereupon the said one hundred State bonds were by said bank delivered to said John Jacob Astor, together with said coupons, the said bank, by its cashier, executing coupons for the interest to fall due on the first day of July, A. D. 1862, and the first day of January, A. D. 1863, respectively; that said John Jacob Astor continued to hold said bonds and coupons, (except as the latter were paid and cancelled by said bank,) being and remaining a citizen of said State of New York, until the 17th day of January, A. D. 1846, when the said bonds were by him severally assigned by endorsement thereon, and delivered, together with all of said coupons then yet to fall due, unto your orator, who hath ever since continued, and now is the holder of all of said one hundred bonds, and of those of said coupons hereinafter mentioned remaining unpaid.

And your orator further shows, that pending said negotiations and
8 in aid thereof, the said bank executed and delivered to said John Jacob Astor its certain bond or writing obligatory under the seal of said corporation, made and dated at said city of St. Louis, on the 27th day of December, A. D. 1837, signed for said bank by the president, and attested by the cashier thereof, being in the penal sum of fifteen thousand dollars, payable to said obligee, his heirs, executors, administrators, or assigns, twenty-five years after date of the negotiation and assignment of the said one hundred State bonds hereinbefore mentioned, and conditioned for the payment by the said Bank of the State of Missouri to the said John Jacob Astor, or his heirs, executors, administrators, or assigns, of the amount of the said one hundred Missouri State bonds, hereinbefore mentioned, in the city of New York, at the time the same should become due and payable according to the true intent, meaning, and effect thereof; or on failure to pay the same at New York at the time when due as aforesaid, for the payment by said bank of all costs, charges, expenses, and differences in exchanges, so as to fully and completely indemnify the said John Jacob Astor, his heirs, executors, administrators, or assigns, from all expenses and liabilities in the transfer of the amount of said bonds, and save him or them, or either or any of them, as fully and completely harmless as though the same were paid in the city of New York, as will fully appear by a copy of the said bond herewith filed, marked C, and made part of this bill; which
9 last-mentioned bond was also, to wit, about the month of January, A. D. 1864, assigned by said John Jacob Astor, then being a citizen of said State of New York, to your orator, who is still the holder thereof.

And your orator further states, that the said interest coupons, respectively annexed to s'd one hundred State bonds, were regularly paid when due by said Bank of the State of Missouri, in the city of New York, namely, to said John Jacob Astor, while he continued, as aforesaid, to hold the same, and after said assignment made as above stated to your orator, up to and including the coupons due January 1st, 1857.

And your orator further states, that by an act of the general assembly of the State of Missouri, approved December 11th, A. D. 1855, entitled "An act to amend an act entitled 'An act to charter the Bank of the State of Missouri,'" it was provided that said bank should continue until the year of our Lord one thousand eight hundred and sixty-one, and that all acts and parts of acts then in force in relation thereto should continue in force until the 2d day of February, A. D. 1861, by virtue whereof said bank did continue to enjoy all its corporate rights and privileges, and to carry on its said banking business, until the 23d day of May, A. D. 1857.

And your orator further shows to your honors, that by a certain other act of the general assembly of the said State of Missouri, approved March 2d, 1857, entitled "An act to regulate banks and banking institutions, and to create the offices of bank commissioners," the then stockholders of said old
10 Bank of the State of Missouri, hereinbefore mentioned, were incorporated under the same name and style, to wit, the "Bank of the State of Missouri," it being provided that said incorporation should take effect upon the assent of said stockholders or a majority of them in interest, being given to said act within three months after the passage thereof in manner as therein specified.

And your orator further shows to your honors, that by the 10th chapter of article IV of said act of March 2d, 1857, it was provided, in respect to said new "Bank of the State of Missouri," as follows: That by said act of assent on the part of said stockholders the former act of incorporation, to wit, said act of February 2d, 1837, above mentioned, being then continued and in force as aforesaid, should be deemed to be annulled and surrendered, except for the purpose of disposing of the property of said old bank, and gradually settling its affairs; the said old bank being required, from and after such assent given, to entirely cease to transact the business of banking; and further, that by said act of assent the entire stock then held in said old bank, other than that owned by the State of Missouri, should be deemed to be transferred to said new bank incorporated by said act, the governor of said State being also required, immediately upon such assent being given, to subscribe to the stock of said new bank, on behalf of said State, one million of dollars, in part to be composed of certain specified funds held by said State, and theretofore invested in the stock of said
old bank, and the remainder to be taken from other funds of said State then
11 in said old bank; and further, that the president and directors of said old bank, then in office, should retain their offices, as such, in said new bank incorporated by said act, until the expiration of the time for which they had been elected, and until their successors should be duly elected and qualified.

And your orator further shows, that the president and directors of said new bank were by said act authorized and required to take charge of the business of said old bank for the purpose of liquidation, and were expressly required to set apart, and at all times keep on hand, to the credit of said old bank, a sum fully equal to the outstanding debts and liabilities of said old bank.

And it was further by said act provided that all surplus, to wit, of the assets of said old bank, so transferred as aforesaid, which might be received by said president and directors over and above such sums as last above mentioned, should be immediately divided and passed to the credit of the stockholders of said new bank, to whom it might respectively belong, in payment of stock subscribed by them, until the whole stock of each should be fully paid; and that all surplus collected, to wit, by assessment therein authorized to be made

on the stock of all the private stockholders of said new bank, beyond what might be sufficient to meet liabilities to the old bank, as aforesaid, and to pay the stock subscribed to the new bank (under authority given by said act to said new bank, to receive new and additional subscriptions for stock therein,)
12 should be paid over to the parties respectively to whom it might belong. And by the 10th section of said chaper 10, of article IV, of said act of March 2d, 1857, it was further provided that in closing the affairs of said old bank it should be the duty of the president of the bank to make application to the circuit court of St. Louis county, to wit, in said State of Missouri, asking that a time be fixed, at the expiration of which all claims against the said bank, not presented for redemption or payment, should be forever barred, and that upon such application the said court should make an order prescribing the mode and manner of giving notice to creditors of such limitations, and fixing a time within which such claims might be presented; and it was further provided by the 10th section of said chapter and article aforesaid that such claims, if not so presented, should be forever barred.

And your orator further shows to your honors, that the provisions of said act of March 2d, A. D. 1857, were duly accepted and assented to within the time limited therefor, to wit, on the 23d day of May, A. D. 1857, by a majority in interest of the stockholders in said old bank, whereby the said stockholders became and were fully incorported under the said style of the "Bank of the State of Missouri," which corporation thereupon began and still continues to carry on a banking business in this State, and is the same corporation herein made defendant.

And your orator further states, that from the date of the acceptance of
13 said new charter, as last aforesaid, to wit, May 23d, 1857, the said old "Bank of the State of Missouri" did entirely cease to transact the business of banking; that since that date no election has been held nor appointment made of any officer under the charter thereof, and that under the provisions of said acts hereinbefore mentioned said charter has now expired, and said first-mentioned corporation is wholly dissolved.

That at the date of acceptance of said new charter the capital stock of said old bank was held in part by the State of Missouri, and the remainder by divers private stockholders, citizens of this and other States, among whom were said defendants, Robert A. Barnes, Edward Walsh, John O'Fallon and Pierre Chouteau, junior, but the amount of said stock held by said State, or by either of said private stockholders, your orator has never known and cannot state; and your orator further states that the remaining stockholders in said old bank up to and at said date were numerous, and are almost wholly unknown to him, for which reason he prays that said private stockholders above named and herein made defendants may be held and taken for the purposes of this suit to represent them all.

And your orator further shows to your honors, that upon the incorporation of said new bank, as aforesaid, and by virtue of the provisions of its said charter above mentioned, the said defendants, Barnes, Walsh, O'Fallon and Chouteau, together with other stockholders in said old bank, names unknown, did receive certain shares of stock in said new bank, (the number or amount
14 whereof your orator has been unable to learn, not having access to the books thereof,) in lieu of said stock by them held in said former corporation, and thereafter held the same to their own use respectively; and that the said new bank, defendant, did, in fact, by the president and directors thereof, take charge of the business of said old bank, and did succeed to, receive and possess the entire assets and property of said former corporation, and did thereby accept the trust created by said act of March 2d, 1857, in behalf of all persons to whom any of the outstanding debts or liabilities of said old bank then were or might be or become due, for the faithful application by it, said defend-

ant, of all and singular the said assets, first, to the payment of all such debts and liabilities, and among others, at maturity thereof, of the demands herein mentioned on the part of your orator.

And your orator further states, that said new bank, defendant herein, did, from time to time, pay out of said assets certain outstanding debts and liabilities of said old bank, the amount and particulars of which your orator does not know, but, among others, said defendant did pay to your orator, as holder thereof, certain of said semi-annual interest coupons above mentioned, falling due since the 23d May, 1857, at maturity thereof.

But your orator further states, that on or about the 23d day of October, A. D. 1858, James M. Hughes, then president of said Bank of the State of
15 Missouri, defendant herein, made an application *ex parte*, and without notice to or the knowledge of your orator, to the circuit court of said county of St. Louis, State of Missouri, praying said court to make such order as provided for in said 10th section of chapter 10, of article IV, of said act of March 2d, 1857, as hereinbefore mentioned; whereupon, and on said day last above mentioned, an order was made by said circuit court in that behalf, whereof a true copy, certified by the clerk of said court, under the seal thereof, is herewith filed, marked "D," and made part of this bill, which order, in substance, provided that all demands against said old "Bank of the State of Missouri" should be presented at the counter of said new bank, defendant herein, at St. Louis, or its branches at Palmyra, Fayette, Springfield, or Cape Girardeau, prior to the first day of January, A. D. 1860, and that unless presented previous to said date last named, such debts and demands of every kind whatever should be forever barred. Said order further required that notice thereof should be given by publication from the first day of November, A. D. 1858, to the first day of January, A. D. 1860, in three weekly newspapers, therein specified, published in said city of St. Louis. Whether such publication was in fact made your orator does not know; but he avers that no such publication was ever, in fact, brought to his notice, nor was he informed thereof, or of the making of said order, till long after said first day of January, A. D.
16 1860, nor could it in any event have barred him.

And your orator further says, that since said first day of January, A. D. 1860, the said Bank of the State of Missouri, defendant, has divided large sums of money, being part of the assets of said old bank, or proceeds thereof, among its stockholders, being also stockholders in said old bank, which dividends were declared on account of said old stock, or the new stock representing and received for the same, and were paid or passed to the credit of said defendants, Barnes, Walsh, O'Fallon and Chouteau, and also of said other former stockholders, names unknown; but the precise amount of such dividends, or the sum or sums paid or credited to either of said known or unknown defendants, your orator knoweth not.

And your orator further states, that the said one hundred State bonds, by him held as aforesaid, became and were due and payable at said Bank of America, in said city of New York, on the first day of January, A. D. 1863, but the same still remains in his hands wholly unpaid; and he also holds, now overdue and unpaid, one hundred of said semi-annual interest coupons, each for thirty dollars, payable at said Bank of America on the first day of July, A. D. 1862, and also one hundred other of said coupons, payable at the same place on the first day of January, A. D. 1863, all of said coupons being payable by said old bank to the holder thereof on presentation and delivery
17 of the same; that payment of said coupons was demanded of said defendant and the president thereof, but was refused; that said State of Missouri, obligor on said bonds, has wholly failed and refused to pay or provide for payment of any of said bonds, and has not, for more than two years past, paid any interest on any of its outstanding bonds, and is notoriously un-

able, in the present condition of its financial and material interests, to provide therefor; that said obligor, being a sovereign State of this Union, is not subject to the jurisdiction of any court, whether of the United States or of said State, as defendant at the suit of any private person, and any attempt by your orator to institute any proceeding at law or in equity against said obligor for the amount of said bonds, or any part thereof, would have been wholly unavailing, nor has he any remedy against said State. And your orator hath requested the said bank, defendant herein, to pay the same, and well hoped that his request would have been complied with. But so it is, may it please your honors, that the said defendants absolutely refuse to comply with his said requests, and the said Bank of the State of Missouri, defendant, by its officers, at times, pretends that your orator is barred by the provisions of said 10th section of chapter 10, of article IV, of said act of March 2d, 1857, and by said order made in that behalf by said circuit court of St. Louis county as aforesaid, from setting
18 up at law or in equity any claim against said old bank or the assets thereof, because, as they say, his said demand was *was* not presented within the time nor at either of the places in said order specified. Whereas your orator charges that even were the said provisions of said act valid and binding as to any person, or against any demand against said old bank, they could not be so held or sustained against a demand founded upon a liability not then accrued nor other than contingent, nor in fact capable of being ascertained or asserted when the period of said pretended limitation ended; and your orator further charges that said pretended limitation, even if otherwise valid, which he denies, would be void as to him for want of notice; and he further charges that the said provisions of said act are wholly void and inoperative as to him, for that it is sought thereby to impair the obligation of the contracts of said old bank above stated, in violation of the Constitution of the United States.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether the said "Bank of the State of Missouri," first herein-
19 before mentioned, was or not a body corporate and politic, established by and duly organized under and in accordance with the provisions of an act of the general assembly of the State of Missouri, entitled "An act to charter the Bank of the State of Missouri," approved February 2d, A. D. 1837? and if yea, when such organization was had and effected under said charter; and when and where said corporation commenced to transact business; and what was the nature of such business; and what and how long transacted; and from and after what date did such business cease to be transacted by said bank?

2. Whether or not the said first-mentioned Bank of the State of Missouri, or any and what officer or agent thereof, by its authority or to its use, did receive from the then governor of said State of Missouri, at any and what time in the year of our Lord 1837, any, and if yea, how many, bonds of the State of Missouri, bearing interest at the rate of six per centum per annum from date of negotiation thereof, purporting to be issued by authority of said act of February 2d, A. D. 1837, or either, and which section thereof; and if yea, by whom were said bonds respectively signed, and by whom countersigned or attested; and under what, if any, seal, and for what amounts; and how numbered, respectively, and of what tenor were said bonds; and for what consideration were said bonds respectively so delivered to and received by said bank or such agent or officer thereof?

3. Whether any, and how many, six per cent. bonds of the State of Missouri were at any and what date in the year of our Lord 1837, or the year of our Lord 1838, negotiated, or sold and assigned and delivered to John Jacob Astor, hereinbefore mentioned, by said Bank of the State of Missouri, or by any and what agent or officer thereof, or any person or persons acting by or under authority or direction of said bank, or the president and directors thereof; and if yea, of what tenor, numbers and amounts, respectively, were the said bonds so to said Astor sold or assigned, and what was the date of such negotiation and of such assignment; and whether such assignment of any and which of said bonds was evidenced or made by any and what writing; and whether such assignment of any or either and which of said bonds was or not written or endorsed upon the same; and what was the tenor or such written assignment or assignments respectively, and by whom were the same signed respectively, and by whom countersigned or attested, and under what, if any, seal, and when and where so made and signed, and by whose or what authority or direction; and what was the actual consideration given or paid for the sale or assignment of said bonds respectively, and by and to the use of or for whom was such consideration received?

4. Whether any and how many coupons or interest or dividend warrants were annexed to or delivered to said Astor with said bonds last above inquired of upon such assignment thereof, and for what amounts were such coupons respectively; and at what dates respectively, and where and to whom were such coupons respectively payable under the terms thereof, and of the said bonds, and of the said assignments thereof, respectively; and whether any and which of said coupons were thereafter paid by said bank: and if yea, when and where, and to whom or to whose use or credit, or to whom, or to the agent of whom, as holder thereof, were such coupons paid respectively?

5. Whether such bond or writing obligatory, under the seal of said bank, in the penal sum of fifteen thousand dollars, of such date, or of or to such purport or effect as hereinbefore in that behalf mentioned, was or not executed by the president and cashier of said bank for and in behalf of the same, and by authority and direction thereof, and delivered to said John Jacob Astor by like authority and direction at or about the time of such negotiation, sale, and assignment to him of said bonds last inquired of, and in aid thereof, or how otherwise?

6. Whether or not the said corporate rights and privileges of said first-mentioned Bank of the State of Missouri were, by any, and what, act or acts of the general assembly of said State of Missouri extended and continued in force; and if yea, until what date were they so continued?

7. What amount of stock in said first-mentioned bank had been taken or subscribed for up to the period when said bank ceased to transact a banking business, and what sum or sums of money had, up to said period, been paid in upon said stock, or such subscriptions collected; and by whom, or by what persons, or to whose or what use, was the stock in said bank, then taken and existing at said period last mentioned, in fact held at said period, and in what amounts, or in what number of shares to each holder thereof; and what was the nature, description and amount of the entire assets and property of said old bank, at said date when it ceased to transact a banking business, then by said old bank held, owned or possessed, and what the actual value thereof, and of the different items or species of property, as well in possession as in action, then composing the same?

8. Whether the said new or present Bank of the State of Missouri, defendant, was or not incorporated by any, and what, act of the general assembly of the State of Missouri, and who were the persons thereby incorporated, and upon what, if any, terms or conditions in respect to the taking effect of said act of incorporation; and whether the provisions or conditions of such act in respect to such incorporation were by any and what persons, and at what date, and in what manner, accepted or assented to?

9. Whether any, and what, provisions were made by such act last above inquired of, or contained therein, in case of the assent thereto of the persons therein designated as corporators of said new bank, in respect to or for the transfer of the stock of said old bank, or the subsequent management or disposition thereof; and whether any and which of such provisions were accepted or assented to by such corporators, or either, and which of them?

10. Whether any, and what, provisions or requirements were in such act last above inquired of contained in respect to the debts or liabilities of or demands against said old or former Bank of the State of Missouri, or in respect to the payment by any, and what, person or persons of either, and which of such debts or liabilities of or demands against said old bank; and whether by the terms of such act, or the true intent and meaning thereof, any and what duty, charge or trust, was created or declared in respect to such debts, liabilities or demands, as last aforesaid, or either or which of them, and to or upon what person or persons was such duty, charge or trust committed or imposed; and whether by any and what person or persons was any, and what, provision or require-
24 ment, duty, charge, or trust, such as hereinbefore inquired of, accepted or undertaken?

11. Whether any and what number of shares of stock in said new bank, defendant herein, was allotted to or received by any and what person or persons herein, made or sought to be made defendants, by name or otherwise, or was allotted to or received by any and what other person or persons to his, her, or their use, in consideration, or in lieu of, or as an equivalent for, or on account of, any stock by such defendant or defendants, or by any person or persons to his, her, or their use, respectively, theretofore held in said old bank; and if yea, what number of shares, and at what nominal or par value thereof, was to them or either and each of them so allotted in stock of said new bank, or by them, respectively, or by any person, to their use respectively, so held or received?

12. What number of shares of stock in said old bank was held by or in the name of said State of Missouri to its own use, or to any and what other use, at the date of the acceptance of the charter of said new bank, defendant herein; and what disposition was made of such stock upon and after such acceptance, and in what manner specifically, and by whom, and by what or whose authority was such disposition made thereof?

13. Whether any and what sums of money, or other specific assets or
25 property of, or belonging to, said old bank were from or by said old bank, or any person or persons for it acting, paid, transferred, assigned, or delivered into, or were received by said new bank, or came into the possession or control thereof, or of either and which of the officers or agents thereof, on account of, or as being or representing such State stock in said old bank, (inquired of in the 12th interrogatory,) or any and what part or proceeds of such State stock?

14. What amount or number of shares of stock in said new bank was subscribed for in the name or on behalf of said State of Missouri, and when and by whom; and whether any and what amount of moneys, or other, and what other, assets or property in possession or in action theretofore of, or in possession of, said old bank, were thereafter paid or transferred, assigned or delivered, to, or received or held by, said new bank in payment, or on account of such subscription, or any part thereof, or were received by said bank, or any officer or agent thereof, and credited to said State for or on account of such subscription?

15. Whether or not the president and directors of said new bank, defendant, or either, and which of them, did, upon the acceptance of the charter thereof, or at any other and what date or dates, take charge of the business of said old bank, and if yea, for what purpose; and whether the said new bank,
26 or either, and which of the officers or agents thereof, as such, did or not, at said date of such acceptance, or at any other and what date or dates,

receive or take charge of, hold, or possess any and what part, or all of the assets or property of said old bank, whether in possession or in action, and if yea, for what purpose and by whose or what authority; and if yea, what specifically was the nature, description, amount, and value of such assets or property so by it or by either and which of its agents or officers from time to time received, held, or possessed?

16. Whether the charter of the said old "Bank of the State of Missouri," or the corporate rights and privileges thereby granted, was *was* not, on the 23d day of May, A. D. 1857, or at any other and what date annulled and surrendered to any and what extent; and whether or not the said corporation has since become and now is by limitation wholly dissolved?

17. Whether the president and directors of said new bank, or either, and which of them, did from time to time, and at what times, since the 23d day of May, A. D. 1857, set apart any and what sum or sums of money for the payment of debts and liabilities of said old bank?

18. Whether said new bank, or either, and which of the officers thereof have paid or caused to be paid any and what debts or liabilities of or demands
27 against said old bank; and if yea, to whom were such payments made, and on what account, respectively; and what, if any, is the gross amount of such debts or liabilities so paid as aforesaid; and what, if any, portion thereof has been paid since the first day of January, A. D. 1860; and what amount of debts or liabilities of or demands against said old bank still remains unpaid, and to whom, respectively, are or were the same due or payable, and by whom held, and on what account, respectively?

19. Whether any, and if yea, how many, of such coupons as mentioned in the 4th interrogatory hereof have been paid by said new bank, defendant herein, or by any and what officer or agent thereof, and to whom and when and where were the same paid, respectively, and for whose use?

20. Whether any, and how many, such coupons as last above referred to still remain unpaid, and by whom the same are held, respectively; and whether this plaintiff has or not, by his solicitor, or other agent in that behalf, requested payment of said coupons to him as holder thereof by said defendant of the president of said new bank, defendent; and whether or not this plaintiff has in like manner requested payment of said one hundred State bonds hereinbefore mentioned and inquired of in the 3d interrogatory; and whether or not said
28 president refused to pay either of said coupons or said bonds, or any part thereof, but, on the contrary, denied any liability therefor on the part of said old bank or of said new bank, defendant herein?

21. Whether or not any, and what, other person or persons, except said new bank, defendant, have in fact received any, and what, portion of the entire assets and property which did, on the 23d day of May, A. D. 1857, belong to said old "Bank of the State of Missouri," otherwise than in payment of debts or liabilities which were or would have become due or payable to such person or persons, respectively, from said old bank; and if yea, what portion or portions of such assets have been by such person or persons so otherwise received, and when and in what manner, and from whom and upon what account, and by whom have the same been so received, respectively?

22. Whether the said new bank, or any and what officers thereof have, at any and what time or times since the first day of January, A. D. 1860, divided among, or paid or credited, or otherwise accounted for to any, and if any, which of the stockholders in said old bank, any amounts or sums of money as or for surplus assets of said old bank; and whether any, and if any, what portion of the assets of said old bank has been at any and what time or times paid,
29 credited, or in any and what other manner accounted for to any and which of such stockholders therein; and what amount, if any, to each of them?

23. Whether or not said defendants, Robert A. Barnes, Edward Walsh, John

O'Fallon, and Pierre Chouteau, junior, or either and which of them did, on and before the 23d day of May, A. D. 1857, own or hold any share or shares of stock in said old bank, and if yea, how many; and whether said defendants, or either and which of them, did receive any and how many shares of stock in lieu of the same respectively; and if yea, whether they or either and which of them now hold such stock so by them received, or any and what part thereof; and whether said defendants or either and which of them have received at any and what time any and what amounts of money, or dividend, or credits, on such stock, on account of said stock by them respectively held in said old bank?

And your orator prays that said Bank of the State of Missouri, defendant herein, and also the said Anthony S. Robinson, herein made defendant, for that he is cashier of the same, and was also for a long time prior and up to said 23d May, 1857, cashier of said old bank, and has had special means and opportunities of information in respect to the affairs and transactions of both said corporations herein inquired of, and is familiar with the same, and also the said re-
30 maining defendants may answer the premises; and that the said Bank of the State of Missouri may be decreed to render a full and true account of all such assets or property of said old "Bank of the State of Missouri," and all proceeds thereof which the said old bank was seized or possessed of or entitled to at the time its said charter was annulled and surrendered as aforesaid, and what assets or property of said old bank was by said new bank, defendant herein, or its officers, received, and how the same has been by it or them applied or disposed of, and what part thereof is now in the possession or control of said defendant or its said officers, and how much thereof has been applied by said bank or its said president and directors towards the payment of debts, liabilities of, or demand against said old bank; and that the said defendants, Robert A. Barnes, Edward Walsh, John O'Fallon, and Pierre Chouteau, junior, be decreed to account for all such amounts or sums as they may have received respectively out of said assets or property of said old bank, and that all other persons, stockholders in said old bank, who may appear to have received any part of such assets may, in like manner, be decreed and required to account for the same; and that by and under the decree of this honorable court the said amounts were due and unpaid to your orator upon and by reason of the said coupons; and the said bonds, so assigned to him as aforesaid, may be required by said de-
31 fendants to be accounted for and paid to your orator, with lawful interest thereon, to the extent of such assets of said old bank not yet disposed of or applied in payment of the debts thereof, and by said defendants, as well known as unknown, respectively received; and that your orator may have such other and further relief in the premises as to your honors shall deem mete and the nature of this case may require.

May it please your honors to grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to the said defendants, the Bank of the State of Missouri, and Robert A. Barnes, the president, and Anthony S. Robinson, the cashier thereof, and the said Robert A. Barnes, Edward Walsh, John O'Fallon, and Pierre Chouteau, junior, commanding them, and each of them, by a certain day, and under a certain penalty to be therein inserted, to appear before your honors, in the circuit court of the United States for the districts of Missouri, and then and there answer the premises and abide the order and decree of the court.

(Signed) HENRY HITCHCOCK,
Solicitor for Plaintiff.

NOTE.—The defendants the Bank of the State of Missouri, and the defendant Robert A. Barnes, and the defendant Anthony S. Robinson, and the defendant Edward Walsh, are each required to answer the interrogatories num-
32 bered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,

18, 19, 20, 21, 22, and 23. The defendant John O'Fallon and the defendant Pierre Chouteau, junior, are each required to answer the interrogatories numbered, respectively, 22 and 23.

Upon filing the foregoing bill, the following order was made, to wit, on the 12th day of March, A. D. 1863:

Order of court for subpœna.

WILLIAM B. ASTOR, complainant, *ag'st* BANK STATE OF MISSOURI *et al.*, defendants. } In chancery.

This day comes the complainant, by Henry Hitchcock, esquire, his solicitor, and files his bill against said defendants; and on motion of said solicitor, a subpœna in chancery is awarded thereon, returnable to rules on the first Monday of April next.

Which subpœna, above referred to, reads in words and figures following, to wit:

Subpœna.

MISSOURI DISTRICTS, *sct.:*

The President of the United States to the Bank of the State of Missouri, a body politic and corporate, established by and under the laws of the State of Missouri, and to Robert A. Barnes, as president of said corporation, and to Anthony S. Robinson, as cashier of the same, and to Robert A. Barnes, Edward Walsh, John O'Fallon, and Pierre Chouteau, junior, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the districts of
33 Missouri, on the first Monday of April next, at the city of St Louis, then and there to answer the bill of complaint of William B. Astor, a citizen of the State of New York, filed against you on the twelfth day of March, 1863. Hereof fail not.

Witness the honorable Roger B. Taney, Chief Justice of the United States, the 12th day of March, 1863.

[SEAL.]

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

(Signed) BEN. F. HICKMAN, *Clerk.*

Memo.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

BEN. F. HICKMAN, *Clerk.*

Upon which writ the following return was made, to wit:

Marshal's return.

Executed the within writ by delivering a true copy of the same and a certified copy of bill in chancery, filed in this case, to Robert A. Barnes, as president of the Bank of the State of Missouri, also by delivering a true copy of the within writ to Anthony S. Robinson, as cashier of the Bank of the State of Missouri, and by delivering a true copy of this writ to Robert A. Barnes, Edward Walsh, John O'Fallon, and Pierre Chouteau, junior, the within named, at St. Louis, Missouri, and within the eastern district of Missouri.

D. A. RAWLINGS,
U. S. Marshal.

Order noting appearance.

On the 6th day of April, 1863, the following order was made, viz:

WILLIAM B. ASTOR, complainant,
ag'st
BANK STATE OF MISSOURI, defendant. } In chancery.

This day come the defendants, by Thomas T. Gantt, esquire, solicitor, and enters the appearance of defendants to the bill of complainant filed herein against them.

Appearance.

Which appearance is as follows, to wit:

WILLIAM B. ASTOR, complainant,
vs.
THE BANK OF THE STATE OF MISSOURI and others, defendants. } In chancery.

In the circuit court of the United States for Missouri, April term, 1863.

34 The defendants served with process come and enter their appearance to the above entitled cause, by their solicitor, Thos. T. Gantt, with whom is C. F. Burnes.

Order to file demurrer.

And afterwards, on the 16th day of April, A. D. 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF THE STATE OF MISSOURI, defendant } In chancery.

This day come the defendants, by solicitor, and file a demurrer to the bill of complainant herein against them.

Which said demurrer is in the words and figures following, to wit:

Demurrer.

WILLIAM B. ASTOR, complainant.
vs.
THE BANK OF THE STATE OF MISSOURI, ROBERT A. BARNES, and ANTHONY S. ROBINSON, impleaded with, &c. } In chancery.

In the United States circuit court for Missouri, April term, 1863.

These defendents, by protestation, not confessing any of the matters and things in said complainant's bill contained to be true, in such manner and form as the same are therein set forth and alleged, (except as hereinafter accepted,) do demur to all and every part of said bill, except so much as craves relief for the non-payment of one hundred coupons of the bonds in said bill described, falling due on the 1st July, 1862, amounting in the aggregate to the sum of three thousand dollars, and for the non-payment of one hundred other coupons of said bonds falling due on the 1st January, 1863, amounting to the further and like sum of three thousand dollars. And for cause of demurrer to all the rest, residue, and remainder of said bill of complaint, these defendants
35 show that the said complainant has not, in and by his said bill, made such a case as entitles him in equity to any relief, (beyond the payment

of the said two hundred coupons, excepted as aforesaid,) nor can any discovery sought for by the said complainant to be made by these defendants or any of them, touching the matters complained of in said bill or any of them, be of any avail to the complainant to entitle him to any further or other relief than as aforesaid in respect of any matter or thing complained of, set forth, and alleged in said bill of complaint. Wherefore and for divers other good causes of demurrer appearing in said bill, these defendants do demur to the same, (except as aforesaid,) and they pray the judgment of this honorable court, whether they shall be compelled to make any other or further answer to any part of said bill, except as aforesaid; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) THOMAS T. GANTT,
With whom is Calvin F. Burnes, for defendants.

I certify that this demurrer is, in my opinion, well founded in point of law.
(Signed) THOS. T. GANTT.

Robert A. Barnes, president of the Bank of the State of Missouri, and one of the above named defendants, says on his oath that this demurrer is not interposed for delay.
(Signed) R. A. BARNES, *Pres.*

Sworn to and subscribed before me, this 8th day of April, 1863.
{ Seal of Not'y Pub. } (Signed) ANTOINE L. CHENIE,
36 *Notary Public, St. Louis Co.*

For the purpose of this demurrer, it is admitted that the exceptions of those portions of the bill of complaint to which it does not profess to apply, is definite and explicit.
(Signed) HENRY HITCHCOCK,
Sol'r for Compl't.

Order submitting demurrer.

And afterwards, on the 17th day of April, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF THE STATE OF MISSOURI, defendant. } In chancery.

This day come the parties, by solicitors, and the questions of law arising upon the demurrer filed by defendants to the bill of complainant herein were argued and submitted to the court for a decision thereon.

Order sustaining demurrer, and leave to amend bill.

And afterwards, on the 23d day of April, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day come the parties, by solicitors, and the court having examined the questions of law arising upon the demurrer filed herein and submitted to the court, is of opinion that the law is for the defendants upon said demurrer, and in accordance with such opinion, now orders that said demurrer be and the same is hereby sustained; and, on the motion of solicitor for complainant, leave is given him to file an amended bill herein, said amended bill to be filed on or before the first Monday of June next; and it is ordered that this cause
37 be now continued until the next term of this court.

Order filing amended bill.

And afterwards, on the 28th day of May, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
agst.
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day comes the complainant, by his solicitor, and files an amended bill in this cause, as allowed him by order of court, on the twenty-third day of April, A. D. 1863, which said amended bill is in words and figures following, to wit:

Amended bill.

To the honorable the judges of the circuit court of the United States within and for the district of Missouri, sitting in equity:

William B. Astor, of the city of New York, and a citizen of the State of New York, brings this his bill against the "Bank of the State of Missouri," a body politic and corporate, established by and under the laws of the State of Missouri, and having its chief office for the transaction of business in the county of St. Louis, in said State, and against Robert A. Barnes, as president of said corporation, and Anthony S. Robinson, as cashier of the same, both of whom are citizens of said State of Missouri; and against the said Robert A. Barnes and Edward Walsh, John O'Fallon, and Pierre Chouteau, junior, all of whom are citizens of said State of Missouri, and are herein sued as well for
38 themselves as for and representing all other persons, names unknown, formerly stockholders in the late "Bank of the State of Missouri," a corporation heretofore established and doing business in said State of Missouri, under the laws thereof, who have received any portion or share of the stock or assets of said late corporation; and thereupon your orator, for an amended bill in this behalf by leave of court first had and obtained, complains and says: That by an act of the general assembly of said State of Missouri, approved the 2d day of February, A. D. 1837, entitled "An act to charter the Bank of the State of Missouri," there was established in the city of Saint Louis, in said State, a banking company called the "Bank of the State of Missouri," with an authorized capital stock of five millions of dollars, to be divided into shares of one hundred dollars each, whereof one half was reserved for the use of the State of Missouri, the remainder being authorized to be subscribed for by individuals, as therein prescribed; that by said act the persons who should become holders of said capital stock were created a body poktic and corporate under the name aforesaid, to have succession as such until the year of our Lord one thousand eight hundred and fifty-seven, and no longer; that said bank was to be governed by a president and twelve directors, the president and at least six of said
39 directors to be appointed on behalf of the State, as therein prescribed; that by said act it was further provided, that books should be opened for the subscription of thirty thousand shares of the capital stock of said bank, on the third Monday in February, A. D. 1837, in manner therein set forth; that the governor of said State of Missouri was by said act authorized and directed thereupon to subscribe one half of said thirty thousand shares on behalf of the State of Missouri, a part thereof to be held by said State for the use of the seminary and saline funds, and the residue of said shares to be held for the use of said State; that for said residue of said shares so to be subscribed for on behalf and held for the use of said State, the said governor was, by section 5th of said act, authorized and directed to execute to said bank the bonds of said State of Missouri, in sums of not less than one thousand dollars each in amount, to be equal

to said residue of said shares, which bonds were to bear interest from date of negotiation thereof, as follows: the first half million at a rate not exceeding six per centum per annum; the remainder at a rate not exceeding five per centum per annum, payable semi-annually in the city of New York, to wit, in said State of New York. Said bonds were required to be made payable to said Bank of the State of Missouri twenty-five years after negotiation thereof, and the said governor was required to deliver said bonds to the president and directors
40 of said bank, in full payment of the stock subscribed for as aforesaid on behalf of the said State; that by said act the said bank was authorized, either through an agent thereby required to be appointed, or in any other manner, or by any other means best suited to its interests, to bring into market, negotiate and sell the said State bonds, provided that said bonds should not be sold at a discount.

And your orator further shows to your honors that said act, by the terms thereof, took effect from said date of its passage; that said "Bank of the State of Missouri" was duly organized thereunder early in the year 1837; that a president and directors were duly appointed for, and forthwith entered upon, the management of its affairs; that a large number of shares of said stock were subscribed for and taken by individuals to your orator unknown, save that they were citizens of this and other States, nor does he know the precise amount of stock so taken; that the said governor subscribed for fifteen thousand shares thereof on behalf of said State, whereof more than 5,000 shares were held for the use of said State; and that thereafter, in the same year 1837, the said bank, by its officers and agents, did commence to do business as such, and did thenceforward continue to carry on a banking business in said city of St. Louis and elsewhere in said State, as by said act authorized, until its said charter
41 was annulled as hereinafter mentioned, during which period said bank became and was possessed of a large amount of real and personal property, in value exceeding two millions of dollars, and was possessed at the time said charter was so annulled and surrendered, as hereinafter mentioned, of assets in value greatly exceeding all the liabilities thereof, direct or contingent, then due or otherwise.

And your orator further shows to your honors, that pursuant to the provisions of the 5th section of said act of February 2d, A. D. 1837, the said governor of the State of Missouri did execute to said bank certain bonds of said State, which were by him delivered to and received by the president and directors of said bank, in payment for stock subscribed for on behalf and to the use of said State; that among the State bonds so executed and delivered to said bank, and being part of the first half million of bonds authorized by, and executed and delivered under, said 5th section of said act, the said governor did, in or about the month of August, A. D. 1837, execute and deliver as aforesaid one hundred bonds of said State of Missouri, signed by him as such governor, and countersigned by the secretary of state of said State of Missouri, under the seal of said State, being each for the sum of one thousand dollars, payable to said bank or their assigns, bearing an interest of six per centum per annum from the day of
42 negotiation thereof, payable by said bank semi-annually thereafter at a bank in the city of New York, or at such other place as the said bank, by endorsement thereon, might agree to pay the same, on the presentation and delivery of the coupons to said bonds respectively annexed, until payment of said principal sum, which principal sum was on a credit of twenty-five years after negotiation. Said bonds were numbered consecutively from 401 to 500, inclusive, and a copy of one of said bonds is herewith filed, (marked A,) and made part of this bill, all the remainder of said one hundred bonds being of like tenor therewith.

And your orator further shows, that in the month of December, A. D. 1837, certain negotiations were had, as by said act authorized, with one John Jacob

Astor, a citizen of the State of New York, which resulted in the sale and assignment by said bank to said Astor of all of the said one hundred State bonds above mentioned, the said Astor paying to said bank not less than the par value thereof, and the date of said negotiation and assignment being the first day of January, A. D. 1838. Said assignment was in writing on the back of each of said one hundred bonds, signed by the president, and countersigned and attested by the cashier of said bank, under the seal thereof, at said city of St. Louis, and said bank thereby agreed to pay the coupons to said bonds respectively annexed to the holders thereof respectively, at the Bank of America, in the
43 city of New York, the said John Jacob Astor, as by the terms of said assignment declared, selecting said last mentioned bank for payment of interest and principal. A copy of said assignment is herewith also filed, marked "B," and made part of this bill.

And your orator further shows, that thereupon the said one hundred State bonds were by said bank delivered to said John Jacob Astor, together with said coupons; that said John Jacob Astor continued to hold said bonds, being and remaining a citizen of said State of New York, until the 17th day of January, A. D. 1846, when the said bonds were by him severally assigned by endorsement thereon and delivered unto your orator, who hath ever since continued and now is the holder of all said one hundred bonds.

And your orator further shows that, pending said negotiations, and in aid thereof, the said bank executed and delivered to said John Jacob Astor its certain bond or writing obligatory, under the seal of said corporation, made and dated at said city of St. Louis, on the 27th day of December, A. D. 1837, signed for said bank by the president and attested by the cashier thereof, being in the penal sum of fifteen thousand dollars, payable to said obligee, his heirs, executors, administrators, or assigns, twenty-five years after date of the negotiation and assignment of the said one hundred State bonds hereinbefore mentioned, and conditioned for the payment by the said Bank of the State
44 of Missouri to the said John Jacob Astor or his heirs, executors, administrators, or assigns, of the amount of the said one hundred Missouri State bonds hereinbefore mentioned, in the city of New York, at the time the same should become due and payable, according to the true intent, meaning, and effect thereof, or, on failure to pay the same at New York at the time when due, as aforesaid, for the payment by said bank of all costs, charges, expenses, and differences in exchanges, so as to fully and completely indemnify the said John Jacob Astor, his heirs, executors, administrators, or assigns, from all expenses and liabilities in the transfer of the amount of said bonds, and save him or them, or either or any of them, as fully and completely harmless as though the same were paid in the city of New York, as will fully appear by a copy of the said bond herewith filed, marked "C," and make part of this bill, which last mentioned bond was also, to wit, about the month of January, A. D. 1846, assigned by said John Jacob Astor, then being a citizen of said State of New York, to your orator, who is still the holder thereof.

And your orator further states that the said interest coupons respectively annexed to said one hundred State bonds were regularly paid when due by said Bank of the State of Missouri in the city of New York, namely, to said John Jacob Astor, while he continued as aforesaid to hold the same, and after said assignment made, as above stated, to your orator, up to and including
45 the coupons due January 1st, 1857.

And your orator further states that, by an act of the general assembly of the State of Missouri, approved December 11, A. D. 1855, entitled "An act to amend an act entitled 'An act to charter the Bank of the State of Missouri,'" it was provided that said bank should continue until the year of our Lord one thousand eight hundred and sixty-one, and that all acts or parts of acts then

in force in relation thereto should continue in force until the 2d day of February, A. D. 1861, by virtue whereof said bank did continue to enjoy all its corporate rights and privileges, and to carry on its said banking business, until the 23d day of May, A. D. 1857.

And your orator further shows to your honors that, by a certain other act of the general assembly of said State of Missouri, approved March 2, 1857, entitled "An act to regulate banks and banking institutions, and to create the offices of bank commissioners," the then stockholders of said old Bank of the State of Missouri, hereinbefore mentioned, were incorporated under the same name and style, to wit, the "Bank of the State of Missouri," it being provided that said incorporation should take effect upon the assent of said stockholders, or a majority of them in interest, being given to said act within three months after the passage thereof in manner as therein specified.

46 And your orator further shows to your honors that, by the 10th chapter of article IV of said act of March 2, 1857, it was provided, in respect to said new "Bank of the State of Missouri," as follows:

That, by said act of assent on the part of said stockholders, the former act of incorporation (to wit, said act of February 2, 1837, above mentioned, being then continued and in force, as aforesaid) should be deemed to be annulled and surrendered, except for the purpose of disposing of the property of said old bank, and gradually settling its affairs, the said old bank being required, from and after such assent given, to entirely cease to transact the business of banking. And further, that, by said act of assent, the entire stock then held in said old bank, other than that owned by the State of Missouri, should be deemed to be transferred to said new bank, incorporated by said act; the governor of said State being also required, immediately upon such assent being given, to subscribe to the stock of said new bank, on behalf of said State, one million of dollars, in part to be composed of certain specified funds held by said State, and theretofore invested in the stock of said old bank, and the remainder to be taken from other funds of said State then in said old bank. And further, that the president and directors of said old bank, then in office, should retain their offices as such in said new bank, incorporated by said act, until the expiration

47 of the time for which they had been elected, and until their successors should be duly elected and qualified.

And your orator further shows, that the president and directors of said new bank were, by said act, authorized and required to take charge of the business of said *of said* old bank, for the purpose of liquidation, and were expressly required to set apart, and at all times keep on hand, to the credit of said old bank, a sum fully equal to the outstanding debts and liabilities of said old bank.

And it was further, by said act, provided, that all surplus (to wit, of the assets of said old bank so transferred, as aforesaid) which might be received by said president and directors, over and above such sum as last above mentioned, should be immediately divided, and passed to the credit of the stockholders of the said new bank to whom it might respectively belong, in payment of stock subscribed by them, until the whole stock of each should be fully paid, and that all surplus collected, to wit, by assessments therein authorized to be made on the stock of all the private stockholders of said new bank, beyond what might be sufficient to meet liabilities to the old bank, as aforesaid, and to pay the stock subscribed to the new bank, (under authority given by said act to said new bank to receive new and additional subscriptions for stock therein,)

48 should be paid over to the parties respectively to whom it might belong.

And by the 10th section of said chapter 10 of article IV of said act of March 2d, 1857, it was further provided that, in closing the affairs of said old bank, it should be the duty of the president of the bank to make application to the circuit court of Saint Louis county, (to wit, in said State of Missouri,) asking that a time be fixed, at the expiration of which all claims against the said bank,

not presented for redemption or payment, should be forever barred, and that, upon such application, the said court should make an order prescribing the mode and manner of giving notice to creditors of such limitation, and fixing a time within which such claims might be presented; and it was further provided, by the 10th section of said chapter and article aforesaid, that such claims, if not so presented, should be forever barred.

And your orator further shows to your honors that the provisions of said act of March 2, A. D. 1857, were duly accepted and assented to within the time limited therefor, to wit, on the 23d day of May, A. D. 1857, by a majority in interest of the stockholders in said old bank, whereby the said stockholders became and were fully incorporated under the said style of the "Bank
49 of the State of Missouri," which corporation thereupon began and still continues to carry on a banking business in this State, and is the same corporation herein made defendant.

And your orator further shows that, from the date of the acceptance of said new charter, as last aforesaid, to wit, May 23d, 1857, the said old "Bank of the State of Missouri" did entirely cease to transact the business of banking; that since that date no election has been held nor appointment made of any officer under the charter thereof, and that, under the provisions of said acts hereinbefore mentioned, said charter has now expired, and said first-mentioned corporation is wholly dissolved; that, at the date of acceptance of said new charter, the capital stock of said old bank was held in part by the State of Missouri, and the remainder by divers private stockholders, citizens of this and other States, among whom were said defendants, Robert A. Barnes, Edward Walsh, John O'Fallon, and Pierre Chouteau, jr.; but the amount of said stock held by said State, or by either of said private stockholders, your orator has never known, and cannot state; and your orator further states that the remaining stockholders in said old bank, up to and at said date, were numerous, and are almost wholly unknown to him, for which reason he prays that said private stockholders above named, and herein made defendants, may be held, and
50 taken for the purposes of this suit, to represent them all.

And your orator further shows to your honors that, upon the incorporation of the said new bank, as aforesaid, and by virtue of the provisions of its said charter above mentioned, the said defendants, Barnes, Walsh, O'Fallon, and Chouteau, together with said other stockholders in said old bank, names unknown, did receive certain shares of stock in said new bank. (the number or amount whereof your orator has been unable to learn, not having access to the books thereof,) in lieu of said stock by them held in said former corporation, and thereafter held the same to their own use respectively; and that the said new bank, defendant, did in fact, by the president and directors thereof, take charge of the business of said old bank, and did succeed to, receive, and possess the entire assets and property of said former corporation, and did thereby accept the trust created by said act of March 2d, 1857, in behalf of all persons to whom any of the outstanding or liabilities of said old bank then were or might be or become due, for the faithful application by it, said defendant, of all and singular the said assets, first to the payment of all such debts and liabilities, and, among others, at maturity thereof, of the demands herein mentioned on the part of your orator.

And your orator further states, that said new bank, defendant herein, did
51 from time to time pay out of said assets certain outstanding debts and liabilities of said old bank, the amount and particulars of which your orator does not know; but among others, said defendant did pay to your orator. as holder thereof, certain of said semi-annual interest coupons above mentioned falling due since the 23d May, 1857, at maturity thereof.

But your orator further states, that on or about the 23d day of October, A. D. 1858, James M. Hughes, then president of said Bank of the State of Missouri,

defendant herein, made an application *ex parte*, and without notice to or the knowledge of your orator, to the circuit court of said county of St. Louis, State of Missouri, praying said court to make such order, as provided for in said 10th section of chapter 10, of article IV, of said act of March 2d, 1857, as hereinbefore mentioned: whereupon, and on said day last above mentioned, an order was made by said circuit court, in that behalf, whereof a true copy certified by the clerk of said court, under the seal thereof, is herewith filed, marked "D," and made part of this bill, which order in substance provided that all demands against said old bank of the State of Missouri should be presented at the counter of said new bank, defendant herein, at St. Louis, or its branches at Palmyra,
52 Fayette, Springfield, or Cape Girardeau, prior to the first day of January, A. D. 1860, and that unless presented previous to said date last named, such debts and demands of every kind whatever, should be forever barred. Said order further required that notice thereof should be given by publication from the first day of November, A. D. 1858, to the first day of January, A. D. 1860, in three weekly newspapers therein specified, published in said city of St. Louis.

Whether such publication was in fact made, your orator does not know, but he avers that no such publication was ever in fact brought to his notice, nor was he informed thereof or of the making of said order, till long after said first day of January, A. D. 1860, nor could it in any event have barred him.

And your orator further shows, that since said first day of January, A. D. 1860, the said Bank of the State of Missouri, defendant, has divided large sums of money, being part of the assets of said old bank, or proceeds thereof, among its stockholders, being also stockholders in said old bank, which dividends were declared on account of said old stock or the new stock representing and received for the same, and were paid or passed to the credit of said defendants, Barnes, Walsh, O'Fallon, and Chouteau, and also of said other former stockholders'
53 names unknown; but the precise amount of such dividends, or the sum or sums paid or credited to either of said known or unknown defendants, your orator knoweth not.

And your orator further states, that the said one hundred State bonds, by him held as aforesaid, became and were due and payable at said Bank of America, in said city of New York, on the first day of January, A. D. 1863, but the same still remain in his hands wholly unpaid; that said State of Missouri, obligor in said bonds, has wholly failed and refused to pay or provide for payment of said bonds, or any one of them, or any part thereof; that your orator cannot, nor could at any time since the said bonds became due, by or through any suit, action, or other proceeding at law or in equity, or by any process of law whatever, collect or make any portion of his said debt, to wit, the said bonds above mentioned, or enforce payment of the same, against said obligor; nor has, nor had, the said obligor any property out of, or from or by means of which, your orator can or could at any time since the maturity of said bonds, by any action or suit at law or in equity, or by or through any process of law, collect, make, or enforce payment of any part of his said debt, but as against said obligor is wholly without remedy: wherefore, your orator avers that the said obligor in
54 said bonds is insolvent, so that a suit by him instituted against it would be unavailing.

And your orator hath requested the said Bank of the State of Missouri, defendant herein, to pay the said moneys so due and payable in said bonds according to the tenor thereof, as well the principal amounts thereof respectively as the interest thereon from time to time, and well hoped that his request would have been complied with. And the said bank, defendant herein, hath in fact, since the commencement of this suit, paid to your orator the sum of six thousand dollars and upwards, for and in full of the coupons on said bonds remaining unpaid at the time said suit was instituted and in the original bill filed, in this cause mentioned.

But so it is, may it please your honors, that the said defendants absolutely refuse to comply with the remainder of his said requests, or to pay any portion of the principal of said bonds or either one of them, and the said Bank of the State of Missouri, defendant, by its officers, at times pretends that your orator is barred by the provisions of said 10th section of chapter 10, of article IV, of said act of March 2d, 1857, and by said order made in that behalf by said circuit court of St. Louis county, as aforesaid, setting up, at law or in equity, any claim
55 against said old bank or the assets thereof, because, as they say, his said demand was not presented within the time nor at either of the places in said order specified.

Whereas, your orator charges that, even were the said provisions of said act valid or binding as to any person or against any demand against said old bank, they could not be so held or sustained against a demand founded upon a liability not then accrued, nor other than contingent, nor in fact capable of being ascertained or asserted, when the period of said pretended limitation ended; and your orator further charges, that said pretended limitation, even if otherwise valid, which he denies, would be void as to him for want of notice; and he further charges, that the said provisions of said act are wholly void and inoperative as to him, for that it is sought thereby to impair the obligation of the contracts of said old bank above stated, in violation of the Constitution of the United States.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information and belief,
56 full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer—that is to say:

1. Whether the said "Bank of the State of Missouri," first hereinbefore mentioned, was or not a body corporate and politic, established by and duly organized under and in accordance with the provisions of an act of the general assembly of the State of Missouri, entitled "An act to charter the Bank of the State of Missouri," approved February 2d, A. D. 1837; and if yea, when such organization was had and effected under said charter, and when and where said corporation commenced to transact business, and what was the nature of such business, and where and how long transacted, and from and after what date did such business cease to be transacted by said bank?

2. Whether or not the said first mentioned Bank of the State of Missouri, or any and what officer or agent thereof, by its authority, or to its use, did receive from the then governor of said State of Missouri at any and what time in the year of our Lord 1837, any, and if yea, how many bonds of the State of Missouri bearing interest at the rate of six per centum per annum from date
57 of negotiation thereof, purporting to be issued by authority of said act February 2d, A. D. 1837, or either and which section thereof; and if yea, by whom were said bonds respectively signed and by whom countersigned or attested, and under what if any seal, and for what amounts and how numbered respectively, and of what tenor were said bonds, and for what consideration were said bonds respectively so delivered to and received by said bank, or such agent or officer thereof?

3. Whether any and how many six per cent. bonds of the State of Missouri were at any and what date in the year of our Lord 1837, or the year of our Lord 1838, negotiated or sold, and assigned and delivered to John Jacob Astor, hereinbefore mentioned by said Bank of the State of Missouri, or by and what agent or officer thereof, or any person or persons acting by or under authority or direction of said bank, or the president and directors thereof; and if yea, of what tenor, numbers, and amounts respectively were the said bonds so to said Astor sold or assigned; and what was the date of such negotiation, and of

such assignment; and whether such assignment of any and which of said bonds was evidenced or made by any and what writing; and whether such
58 assignment of any or either, and which of said bonds was or not written or endorsed upon the same; and what was the tenor of such written assignment or assignments respectively; and by whom were the same signed respectively, and by whom countersigned or attested; and under what, if any seal; and when and where so made and signed; and by whose or what authority or direction; and what was the actual consideration given or paid for the sale or assignment of said bonds respectively, and by and to the use of, or for whom was such consideration received?

4. Whether any how many coupons or interest or dividend warrants were annexed to, or delivered to said Astor with said bonds last above inquired of, upon such assignment thereof; and for what amounts were such coupons respectively; and at what dates respectively, and where and to whom were such coupons respectively payable under the terms thereof, and of the said bonds, and of the assignments thereof, respectively; and whether any, and which of said coupons were thereafter paid by the Bank of the State of Missouri, defendant herein; and if yea, when and where, and to whom, or to whose use or credit, or to whom, or to the agent of whom, as holder thereof, were such coupons paid respectively?

59 5. Whether such bond or writing obligatory, under the seal of said bank, in the penal sum of fifteen thousand dollars, of such date, or of or to such purport or effect as hereinbefore in that behalf mentioned, was or not executed by the president and cashier of said bank, for and in behalf of the same, and by authority and direction thereof, and delivered to said John Jacob Astor by like authority and direction, at or about the time of such negotiation, sale, and assignment to him of said bonds last inquired of, and in aid thereof, or how otherwise?

6. Whether or not the said corporate rights and privileges of said first mentioned Bank of the State of Missouri, whereby any and what act or acts of the general assembly of said State of Missouri, extended and continued in force; and if yea, until what date were they so continued?

7. What amount of stock in said first mentioned bank had been taken or subscribed for up to the period when said bank ceased to transact a banking business; and what sum or sums of money had up to said period been paid in upon said stock or such subscriptions collectively; and by whom, or by what persons, or to whose or what use was the stock in said bank then taken and existing at said period last mentioned, in fact held at said period, and
60 in what amounts, or in what number of shares to such holder thereof; and what was the nature, description, and amount of the entire assets and property of said old bank at said date when it ceased to transact a banking business, then by said old bank held, owned, or possessed, and what the actual value thereof, and of the different items or species of property, as well in possession as in action, then composing the same?

8. Whether the said new or present Bank of the State of Missouri, defendant, was or not incorporated by any and what act of the general assembly of the State of Missouri, and who were the persons thereby incorporated, and upon what, if any, terms or conditions in respect to the taking effect of said act of incorporation; and whether the provisions or conditions of such act in respect to such incorporation were by any and what persons, and at what date, and in what manner, accepted or assented to?

9. Whether any and what provisions were made by such act last above inquired of, or contained therein, in case of the assent thereto of the persons therein designated as corporators of said new bank in respect to or for the transfer of the stock of said old bank, or the subsequent management or
61 disposition thereof; and whether any and which of such provisions

were accepted or assented to by such corporators, or either, and which of them?

10. Whether any and what provisions or requirements were in such act last above inquired of contained in respect to the debts or liabilities of or demands against said old or former "Bank of the State of Missouri," or in respect to the payment by any and what person or persons of either, and which of such debts or liabilities of or demands against said old bank; and whether by the terms of such act, or the true intent and meaning thereof, any, and what duty, charge, or trust was created or declared in respect to such debts, liabilities, or demands as last aforesaid, or either, and which of them, and to or upon what person or persons was such duty, charge, or trust committed or imposed; and whether by any and what person or persons was any and what provisions or requirement, duty, charge, or trust, such as hereinbefore inquired, accepted or undertaken?

11. Whether any and what number of shares of stock in said new bank, defendant herein, was allotted to or received by any and what person or persons herein made or sought to be made defendants by name or otherwise,
62 or was allotted to or received by any and what other person or persons to his, her, or their use, in consideration or in lieu of, or as an equivalent for, or on account of, any stock by such defendant or defendants, or by any person or persons, to his, her, or their use respectively, theretofore held in said old bank; and if yea, what number of shares, and at what nominal or par value thereof was to them or either, and each of them, so allotted in stock of said new bank, or by them respectively, or by any person to their use respectively, so held or received?

12. What number of shares of stock in said old bank was held by or in the name of said State of Missouri to its own use, or to any and what other use, at the date of the acceptance of the charter of said new bank, defendant herein; and what disposition was made of such stock upon and after such acceptance, and in what manner specifically, and by whom, and by what or whose authority, was such disposition made thereof?

13. Whether any and what sums of money or other specific assets or property of or belonging to said old bank were from or by said old bank, or any person or persons for it acting, paid, transferred, assigned, or delivered into or were received by said new bank, or came into the possession or control
63 thereof, or of either, and which of the officers or agents thereof, on account of, or as being or representing such State stock in said old bank, (inquired of in the 12th interrogatory,) or any and what part or proceeds of such State stock?

14. What amount or number of shares of stock in said new bank was subscribed for in the name or on behalf of said State of Missouri, and when, and by whom; and whether any and what amount of moneys, or other, and what other, assets or property in possession or in action, theretofore of or in possession of said old bank, were thereafter paid or transferred, assigned, or delivered to, or received or held by, said new bank, in payment or on account of such subscription, or any part thereof, or were received by said bank, or any officer or agent thereof, and credited to said State for or on account of such subscription?

15. Whether or not the president and directors of said new bank, defendant, or either and which of them, did, upon the acceptance of the charter thereof, or at any other and what date or dates, take charge of the business of said old bank; and if yea, for what purpose; and whether the said new bank, or either and which of the officers or agents thereof, as such, did, or not, at such date of such acceptance, or at any other and what date or dates, receive, or take
64 charge of, hold, or possess any, and what part, or all of the assets or property of said old bank, whether in possession or in action; and if yea, for what purpose, and by whose or what authority; and if yea, what, specifi-

cally, was the nature, description, amount, and value of such assets or property so by it or by either and which of its agents or officers, from time to time, received, held, or possessed?

16. Whether the charter of said old Bank of the State of Missouri, or the corporate rights and privileges thereby granted, was not on the 23d day of May, A. D. 1857, or at any other and what date, annulled and surrendered to any and what extent; and whether or not the said corporation has since become and now is by limitation wholly dissolved?

17. Whether the president and directors of said new bank, or either and which of them, did, from time to time, and at what times since the 23d day of May, A. D. 1857, set apart any and what sum or sums of money for the payment of debts and liabilities of said old bank?

18. Whether said new bank, or either and which of the officers thereof, have paid or caused to be paid any and what debts or liabilities of or demands
65 against said old bank; and what, if any, is the gross amount of such debts or liabilities so paid as aforesaid; and what, if any, portion thereof has been paid since the first day of January, A. D. 1860; and what amount of debts or liabilities of or demands against said old bank still remains unpaid, and to whom respectively are or were the same due or payable, and by whom held, and on what account respectively?

19. Whether any, and if yea, how many of such coupons as mentioned in the 4th interrogatory hereof have, since the first day of January, A. D. 1860, been paid by said new bank, defendant herein, or by any and what officer or agent thereof, and to whom and when and where were the same paid respectively; and for whose use?

20. Whether or not this plaintiff has himself, or by his agent or agents, requested payment by said new bank, defendant herein, to him, said plaintiff, as holder thereof, of the principal amounts of said one hundred State bonds hereinbefore mentioned, and in the preceding 3d interrogatory inquired of; and whether or not such payment has been made in whole or in part?

21. Whether or not any and what other person or persons except said new bank, defendant, its officers or agents, as such, have in fact received any
66 and what portion of the entire assets and property which did on the 23d day of May, A. D. 1857, belong to said old Bank of the State of Missouri, otherwise than in payment of debts or liabilities which were or would have become due or payable to such person or persons, respectively, from said old bank; and if yea, what portion or portions of such assets have been by such person or persons so otherwise received, and when and in what manner and from whom and upon what account and by whom have the same been so received, respectively?

22. Whether the said new bank or any and what officers thereof have at any and what time or times since the first day of January, A. D. 1860, divided among, or paid, or credited, or otherwise accounted for to any, and if any, which of the stockholders in said old bank, any amounts or sums of money as or for surplus assets of said old bank; and whether any, and if any, what portion of the assets of said old bank has been at any and what time or times paid, credited, or in any and what other manner accounted for to any and which
67 of such stockholders therein; and what amount, if any, to each of them?

23. Whether or not said defendants, Robert A. Barnes, Edward Walsh, John O'Fallon and Pierre Chouteau, junior, or either and which of them, did, on and before the 23d day of May, A. D. 1857, own or hold any share or shares of stock in said old bank; and if yea, how many; and whether the said defendants, or either, and which of them, did receive any and how many shares of stock in lieu of the same respectively; and if yea, whether they or either and which of them now hold such stock so by them received, or any and what part thereof; and whether said defendants or either and which

of them have received at any and what time, any and what amounts of money or dividends or credits on such stock on account of said stock by them respectively held in said old bank?

And your orator prays that said Bank of the State of Missouri, defendant herein, and also the said Anthony S. Robinson, herein made defendant for that he is cashier of the same, and was also for a long time prior and up to said 23d May, 1857, cashier of said old bank, and has had special means and op-
68 portunities of information in respect to the affairs and transactions of both said corporations herein inquired of and is familiar with the same, and also the said remaining defendants, may answer the premises, and that the said Bank of the State of Missouri may be decreed to render a full and true account of all such assets or property of said old "Bank of the State of Missouri," and all proceeds thereof which the said old bank was seized or possessed of or entitled to at the time its said charter was annulled and surrendered as aforesaid, and what assets or property of said old *old* bank was by said new bank, defendant herein, or its officers, received, and how the same has been by it or them applied or disposed of, and what part thereof is now in the possession or control of said defendant or its said officers, and how much thereof has been applied by said bank or its said president and directors towards the payment of the debts and liabilities of or demands against said old bank; and that the said defendants, Robert A. Barnes, Edward Walsh, John O'Fallon and Pierre Chouteau, junior, be decreed to account for all such amounts or sums as they may have received respectively out of said assets or property of
69 said old bank, and that all other persons, stockholders in said old bank, who may appear to have received any part of such assets, may in like manner may be decreed and required to account for the same; and that by and under the decree of this honorable court the said amounts now due and unpaid to your orator upon and by reason of the said bonds so assigned to him as aforesaid may be required by said defendants to be accounted for and paid to your orator, with lawful interest thereon, to the extent of such assets of said old bank not yet disposed of or applied in payment of the debts thereof, and by said defendants, as well known as unknown, respectively received; and that your orator may have such other and further relief in the premises as to your honors shall seem meet and the nature of this case may require. May it please your honors to grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to said defendants, the Bank of the State of Missouri, and Robert A. Barnes, the president, and Anthony S. Robinson, the cashier thereof, and the said Robert A. Barnes, Edward Walsh, John O'Fallon and Pierre Chouteau, junior, commanding them and each of
70 them, by a certain day and under a certain penalty, to be therein inserted, to appear before your honors in the circuit court of the United States for the districts of Missouri, and then and there answer the premises and abide the order and decree of the court.

(Signed) HENRY HITCHCOCK,
Solicitor for Plaintiff.

NOTE.—The defendant the Bank of the State of Missouri, and the defendant Robert A. Barnes, and the defendant Anthony S. Robinson, and the defendant Edward Walsh, and the defendant Pierre Chouteau, junior, are each required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23. The defendant John O'Fallon is required to answer the interrogatories numbered, respectively, 22 and 23.

Order noting appearance.

On the 6th day of July, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day comes the defendant, by Thomas T. Gantt, esq., its solicitor, and enter their appearance to the amended bill filed by complainant herein; which appearance is in words and figures following, to wit:

Appearance.

In the United States circuit court for Missouri.

WILLIAM B. ASTOR
vs.
THE BANK OF THE STATE OF MISSOURI, and others. } In chancery.

71 The said defendants come and enter their appearance to the amended bill in this cause filed.

(Signed) THOS. T. GANTT,
With whom is C. F. BURNES,
for Defendants.

JULY 6th, 1863.

Order filing demurrer.

And on the 9th day of July, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day come the defendants, by Thos. T. Gantt, esquire, their solicitor, and file a demurrer to the amended bill of complaint filed herein; which demurrer is in words and figures following, to wit:

Demurrer.

In the United States circuit court for Missouri.

WILLIAM B. ASTOR
vs.
THE BANK OF THE STATE OF MISSOURI, and others. } In chancery.

Demurrer to amended bill.

These defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said amended bill of complainant contained to be true, in such form and manner as the same are therein set forth and alleged, do demur in law to the said amended bill, and for cause of demurrer show that the said complainant hath not by his said amended bill made such a case as entitles him in a court of equity to any discovery or relief from or
72 against these defendants touching the matters, or any of them, contained in said amended bill; wherefore, and for divers other good causes of demurrer appearing on the said amended bill of complaint, these defendants do demur to the said amended bill and to all the matters and things therein contained; and they pray the judgment of this honorable court whether they shall be compelled to make any other or further answer to the said amended bill of

complaint; and they humbly pray to be dismissed hence with their reasonable costs in this behalf sustained.

(Signed) THOS. T. GANTT,
Solicitor for Defendants,
With whom is C. F. BURNES, Esq.

I certify that this demurrer is, in my opinion, well founded in point of law.

(Signed) THOS. T. GANTT,
of Counsel for Demurrants.

In the U. S. circuit court for Missouri.

WILLIAM B. ASTOR
vs.
THE BANK OF THE STATE OF MISSOURI, and others. } In chancery.

Robert A. Barnes, one of the defendants in this cause, and president of the Bank of the State of Missouri, makes oath and says that the aforegoing demurrer is not interposed for delay.

(Signed) ROBERT A. BARNES.

Subscribed and sworn to before me this 9th July, 1863.

(Signed) BEN. F. HICKMAN,
Clerk U. S. Circuit Court Mo. Dist's.

Order submitting demurrer.

73 On the 10th day of October, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day come the parties by solicitors, and by consent of said solicitors, the questions of law arising upon the demurrer, filed by defendants to the amended bill of complainant, were set down for argument and hearing instanter, and the questions were argued by said solicitors, and submitted to the court for a decree thereon.

Order sustaining demurrer.

On the 14th day of October, 1863, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day come again the parties by their solicitors, and the court having examined the questions of law arising upon the demurrer, filed by defendants to the amended bill of complainant filed herein, and being fully advised of and concerning the same, is of opinion that the law is for the defendants of said demurrer, and in accordance with such opinion now orders and decrees that said demurrer be, and the same is hereby sustained.

Final order dismissing bill.

On the 26th day of October, 1863, the following was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day come again the parties by their solicitors, and the complainant
74 by his solicitor says he will not ask further to amend the bill filed

by him herein, but will abide the decree of the court as rendered upon the questions of law arising upon said demurrer. It is therefore now finally ordered, adjudged, and decreed by the court, in accordance with the decree of the court upon the demurrer filed herein by defendants to amended bill of said complainant, that the original and amended bill of said complainant against said defendants be, and the same is hereby dismissed; and that the said complainant pay the costs of this suit, and that execution issue therefor.

Order granting appeal.

And on the same day and year last aforesaid, the following order was made, to wit:

WILLIAM B. ASTOR, complainant,
ag'st
BANK OF STATE OF MISSOURI, defendant. } In chancery.

This day comes again the complainant by his solicitor, and files his motion for an appeal from the decree rendered herein to the Supreme Court of the United States, which is allowed upon the said complainant entering into a bond with Henry Hitchcock or George H. Lubke, as principal, and John R. Shepley, as surety, in the sum of five hundred dollars, before any judge or clerk of this court, within twenty days from the date hereof. Which said motion for appeal is in the words and figures following, to wit:

Motion for appeal.

WILLIAM B. ASTOR
against
THE BANK OF THE STATE OF MISSOURI and others.

In the circuit court of the United States for the districts of Missouri.

75 And now comes the said complainant and prays the court that an appeal to the Supreme Court of the United States, from the decree of the court, rendered in this cause, be allowed to him.

(Signed) HENRY HITCHCOCK,
Solt. for Complainant.

And which said bond is in the words and figures following, to wit:

Bond.

In the circuit court of the United States for the districts of Missouri.

WILLIAM B. ASTOR
vs.
THE BANK OF THE STATE OF MISSOURI *et al.* } In chancery and on appeal.

Know all men by these presents, that we, George H. Lubke, as principal, and John R. Shepley, as surety, are held and firmly bound unto the Bank of the State of Missouri, Robert A. Barnes, Anthony S. Robinson, Edward Walsh, John O'Fallon, and Pierre Chouteau, junior, in the sum of five hundred dollars, for the payment of which well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 4th day of November, A. D. 1863.

Whereas the complainant, in the above entitled cause, has prayed for and been allowed an appeal to the Supreme Court of the United States, to reverse
76 the decree rendered in said cause by the circuit court of the United States for the districts of Missouri, at the October term of said court, in the year 1863: Now, therefore, the condition of this obligation is such, that if the above

named William B. Astor, his executors, administrators, or heirs, shall well and truly prosecute the appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEO. W. LUBKE. [SEAL.]
JOHN R. SHEPLEY. [SEAL.]

Sealed and acknowledged this 4th day of November, 1863, in presence of and before—

BEN. F. HICKMAN,
Clerk U. S. C. C. Mo. Dis.

Agreement of counsel to copy exhibits.

On the 17th day of December, 1863, there was filed the following agreement by counsels to copy exhibits, which agreement is in words and figures following, to wit:

In the circuit court of the United States for the districts of Missouri.

WILLIAM B. ASTOR, complainant,
vs.
THE BANK OF THE STATE OF MISSOURI and others, defendants. } In chancery.

It is agreed by and between the solicitors for the complainant and the
77 defendants respectively, in the above entitled cause, that the several papers filed by said complainant therein, marked Exhibits A, B, C, and D, respectively, and being all the exhibits therein filed, were used at the hearing of said cause, and are to be copied in the record thereof, to be made out by the clerk for the Supreme Court of the United States, to be read at the hearing of said cause in the Supreme Court of the United States, in the same manner and with the like effect as they had been included in the order made in said cause at the time of the granting of the appeal relative to the papers to be copied into said record by the clerk of the circuit court for Missouri.

(Signed) THOS. T. GANTT,
Solt. for Defendants.

(Signed) HENRY HITCHCOCK,
Solt. for Compl't.

The following are the exhibits:

EXHIBIT A.

(Copy.)

$1,000. UNITED STATES OF AMERICA. $1,000.

Missouri 6 per cent. loan.

Know all men by these presents, that the State of Missouri acknowledges to owe the Bank of the State of Missouri, or their assigns, one thousand dollars, lawful money of the United States of America, bearing an interest of six per centum
per annum from the day of negotiation, payable by the Bank of the State
78 of Missouri semi-annually, on the first Monday of July and January, in each and every year, at a bank in the city of New York, or at such other place as the said Bank of the State of Missouri, by endorsement hereon, may agree to pay the same, on the presentation and delivery of the coupons or dividend warrants on the margin subjoined, until payment of the principal sum; which principal sum is on a credit of twenty-five years after negotiation.

The faith of the State of Missouri is hereby solemnly pledged for the final payment of the said one thousand dollars, which is a part of the sum sold by authority of the fifth section of an act of the general assembly of the State of

Missouri, entitled "An act to charter the Bank of the State of Missouri," approved February 2d, 1837.

In testimony whereof, and pursuant to the authority granted by the legislature of the State of Missouri in the aforesaid act, I, Lilburn W. [SEAL.] Boggs, governor of the said State, have signed this certificate, and caused the seal of the State to be affixed at Jefferson City, this 7th day of August, 1837.

LILBURN W. BOGGS.

By the governor: PETER G. GLOVER,
Secretary of State.

EXHIBIT B.

Copy of assignment on back of the bond.

79 The Bank of the State of Missouri hereby assign the within bond to John Jacob Astor, esq., or to his order, and bind the said bank to pay the coupons or dividend warrants annexed to this bond to whomsoever may be the holder thereof, at a bank in New York, or at the said bank in St. Louis, as said holder may select, payable at the Bank of America in the city of New York, Mr. Astor selecting that bank for payment of interest and principal.

Witness the signature of the president and the seal of the corporation, this seventh day of September, in the year of our Lord one thousand eight hundred and thirty-seven.

(Signed) JOHN SMITH.

Negotiated January first, 1838.

H. SHURLDS, *Cashier.*

EXHIBIT C.

Copy of bond.

Know all men by these presents, that we, the president, directors, and company of the "Bank of the State of Missouri," are held and firmly bound unto John Jacob Astor, of the city and State of New York, in the sum of fifteen thousand dollars, to be well and truly paid unto the said John Jacob Astor, his heirs, executors, administrators or assigns, twenty-five years after the 80 date of the negotiation and assignment of certain bonds of the State of Missouri, specified in the annexed condition, for the true payment, well and faithfully to be made, we bind ourselves and our successors firmly by these presents. Signed by the president, and countersigned by the cashier, and attested by affixing the seal of the said bank.

Whereas the said Bank of the State of Missouri have by their agent negotiated, sold and assigned unto the said John Jacob Astor, of the city and State of New York, one hundred of the bonds of the State of Missouri, executed by the State and made payable to the "Bank of the State of Missouri," in pursuance of an act of the general assembly of the State of Missouri, approved February second, eighteen hundred and thirty-seven, which bonds are executed for one thousand dollars each, and made payable to said bank twenty-five years after the date of the negotiation and sale of the same: And whereas the president, directors and company of the "Bank of the State of Missouri" are anxious and willing to guarantee the payment of said bonds of the State of Missouri when the same become due and payable according to the tenor thereof, in the city of New York and State of New York, so that the said John 81 Jacob Astor or his heirs, executors, administrators or assigns shall be saved harmless from all expenses and costs of exchange between this and the city of New York, on the amount of said bonds: Now the condition of this obligation is such, that if the above bound Bank of the State of Missouri, or the president, directors and company thereof, shall pay or cause to be paid

to the said John Jacob Astor, or his heirs, executors, administrators or assigns, the amount of said bonds in the city of New York, at the time the same becomes due and payable, according to the intent, meaning and effect thereof, or on failure to pay the same at New York at the time when due as aforesaid, shall pay all costs, charges, expenses, and differences in exchanges, so as to fully and completely indemnify the said John Jacob Astor, his heirs, executors, administrators or assigns, from all expenses and liabilities in the transfer of the amount of said bonds, and save him or them, or either or any of them, as fully and completely harmless as though the same were paid in the city of New York, then, and in that case, this bond to become null and void and of non effect, otherwise to remain in full force and virtue.

82 In testimony whereof, I, John Smith, president of said bank, by authority of the directors thereof, have hereunto set my name, and [SEAL.] caused to be affixed the seal of said bank. Done at St. Louis this the twenty-seventh day of December, eighteen hundred and thirty-seven.

(Signed) JOHN SMITH.
H. SHULDS,
Cash'r of the Bank of the State of Missouri.

EXHIBIT D.

In the Saint Louis circuit court, October term, 1858, October 23d, 1858. In the matter of the late Bank of the State of Missouri.

The charter of the Bank of the State of Missouri having expired by the acceptance of the new charter, on the 23d day of May, A. D. 1857, James M. Hughes, president of said Bank of the State of Missouri, by C. F. Burnes, attorney, comes and files an application in pursuance of section 10 of chapter X of article IV of the legislature of the State of Missouri, entitled "An act to regulate banks and banking institutions, and to create the offices of bank commissioners," approved March 2d, 1857; and on his motion the court doth order that all demands against the Bank of the State of Missouri, under its old charter, shall be presented at the counter of the present Bank of the 83 State of Missouri, at St. Louis, or its branches at Palmyra, Fayette, Springfield, or Cape Girardeau, prior to the first day of January, A. D. 1860, and unless thus presented previous to said first day of January, 1860, such debts and demands of every kind whatever shall be forever barred. And it is further ordered by the court that notice of such limitation and of this order shall be given to the creditors of said bank by publication in the Weekly Missouri Republican, Weekly Missouri Democrat, and Weekly St. Louis Evening News, three newspapers printed and published in the city of St. Louis, said notice to be so published from the first day of November, 1858, until the first day of January, 1860.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Stephen Rice, clerk of the St. Louis circuit court, within and for the county of St. Louis, certify the above and foregoing to be a true and complete copy of an order made by the St. Louis circuit court in the matter of the late Bank of the State of Missouri, in pursuance of section 10th of chapter X of article IV of an act of the legislature of the State of Missouri, entitled "An act to regulate banks and banking institutions and to create the offices 84 of bank commissioners," approved March 2d, 1857, as fully as the said order remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of said [SEAL.] St. Louis circuit court at office in the city of St. Louis, this 21st day of November, A. D. 1862.

(Signed) STEPHEN RICE, *Clerk.*

MISSOURI DISTRICTS, *sct:*

I, Benjamin F. Hickman, clerk of the circuit court of the United States for the districts of Missouri, do hereby certify the foregoing eighty-four pages, including the above, to contain a true and complete transcript of the record and proceedings had in said court in the chancery cause, as stated in the caption thereof, of William B. Astor ag'st the "Bank of the State of Missouri," Robert A. Barnes and others, as the same remains of record and on file in said office.

In witness whereof, I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, this 19th day of December, A. D. 1863.

[SEAL.]

BEN. F. HICKMAN, *Clerk.*

Fees, $22 70.